

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action No. 25-10685-WGY

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS, et al.,

Plaintiffs,

v.

MARCO RUBIO, et al.,

Defendants.

FILED
IN CLERKS OFFICE

2025 OCT 23 PM 1:23

U.S. DISTRICT COURT
DISTRICT OF MASS.

NOTICE OF UNAVAILABILITY AND SUPPLEMENT TO MOTION TO INTERVENE
(INCORPORATING AUTHORITY)

Proposed Intervenor ("PI") K.L. Smith respectfully submits this Notice of Unavailability and Supplement to Motion to Intervene in the above-captioned action, stating as follows:

ARGUMENT



When the house is on fire, judges take naps.¹

PI hereby notices the Court that he will be absent from the country until November 11; as it has not yet ruled on PI's Motion to Intervene, a practical request is therefore in order.

¹ Don't blame me, Your Honor. You said it yourself: "we are slow, ponderously slow." Order, *AAUP v. Rubio*, ECF # 261 at 152. In reliance on your assertion that a hearing on remedy "will promptly be scheduled," *id.* at 161, a motion to intervene was rushed via express mail, in the hope that PI could be heard in some form in that hearing. PI can still be heard, albeit in paper form.

In reliance on the impeccable scholarship of your old professors, the legendary Raoul Berger and Louis Jaffe, PI believes he has the right to intervene in this matter with respect to the remedy phase of this case. But as the request is for permissive intervention, this Court is free to treat PI as an amicus, or even the anonymous wag from Philly who sent that legendary postcard.

PI is on a quest so hopeless, it would freeze Don Quixote's blood: to have one of our black-robed oracles of the law explain how, under what little is left of our "magnificent Constitution," it is logically possible for an oathbreaking adjudged insurrectionist not absolved by Congress to serve as our President. U.S. Const. amend. XIV, § 3. As the only remedy that would be adequate in this matter is a declaration that he is not, and all of his and his designates' actions are void ab initio, *Norton v. Shelby County*, 118 U.S. 425, 443 (1886), this Court could hold that answer.

You will forgive my persistence in this, but "freedom is a fragile thing" that must be fought for "constantly by each generation, for it comes only once to a people." ECF # 261 at 159 (citation omitted). And our precious liberties are in grave peril. If there is any discernible structural difference between the President's power and the *Führerprinzip* of Reichchancellor Hitler under the Roberts Court's ukases, it is not obvious. As Justice Sotomayor observes:

The President of the United States is the most powerful person in the country, and possibly the world. When he uses his official powers in any way, under the majority's reasoning, he now will be insulated from criminal prosecution. Orders the Navy's Seal Team 6 to assassinate a political rival? Immune. Organizes a military coup to hold onto power? Immune. Takes a bribe in exchange for a pardon? Immune. Immune, immune, immune.

In every use of official power, the President is now a king above the law.

Trump v. United States, No. 23-939, 603 U.S. __ (2024) (Sotomayor, J., dissenting), slip op. at 29-30.

PI is the Plaintiff in two cases seeking to remove Donald Trump from office via a quo warranto. In the first case, PI drew a Republican judge, and the case is being presided over by a Trump judge. Like Nazi judges in Germany, Trump judges have demonstrated a strong and persistent tendency

to rule for their benefactor: If Donald Trump or his designates are parties and Trump judges are on a case, you know without looking how the case will turn out. For instance, when I heard about the case involving troops in Portland, I asked Grok: “Susan P. Graber, Ryan D. Nelson, and Bridget S. Bade. Circuit Judges. Who appointed them?” Grok told me that two were appointed by Trump, and one by Clinton. Two seconds of AI research told me that Trump would get his way, and there would be a dissent. Why am I never surprised?² *Oregon v. Trump*, No. No. 25-6268 (9th Cir. Oct. 20, 2025).

“Trump sought three things in his judicial appointees, or as he sometimes called them, **“my judges.”** First, he wanted justices who would overturn *Roe v. Wade*. Second, he wanted “jurists in the mold of Justices Antonin Scalia, Clarence Thomas and Samuel Alito.” **Third, he wanted judges who would be loyal to him.**” David Lat and Zachary B. Shemtob, Trump’s Supreme Court Picks Are Not Quite What You Think, *N.Y. Times*, Feb. 12, 2023 (emphasis added). As a group, that is *exactly* what the public—and scholars across the political spectrum—thinks. E.g., Andrew Seger and Phil Mattingly, Trump transformed the federal judiciary. He could push the courts further right in a second term, *CNN*, July 13, 2024: (““Some of Trump’s judicial appointees really push the envelope in an ideological way,” Donald B. Ayer, a former deputy attorney general under President George H.W. Bush, told CNN.”); Liz Mineo, Do justices really set aside personal beliefs? Nope, legal scholar says, *Harvard Gazette*, Oct. 30, 2020 (interview of Harvard’s Michael Klayman); Keith Thirion, Vet Trump’s Judicial Picks for Their Views on Presidential Power, *Democracy Docket*, Mar. 26, 2025. **And they are not wrong.**

Recognizing the obvious, PI filed a petition in DC Superior Court pursuant to statute, buttressed by precedent. But the Trump Department of Justice filed a motion for removal, ensuring

² While trial judges display occasional fits of independence, and some Trump actions are so far over the line that no judge can countenance them, this rule holds with distressing regularity at all appellate levels.

interminable delay. *Smith v. Trump*, Case No. 25-cv-03602 (CRC) (D.D.C. 2025). As an interested party, PI has automatic standing, see *N.M. ex rel. White v. Griffin*, No. D-101-CV-2022-00473 (N.M. Dist. Ct. Santa Fe Cnty. 2022) (barring insurrectionist Coay Griffin from holding state office; the statutes and processes are substantially identical), and all relevant facts are judicially noticeable or established by collateral estoppel. An order could be issued tomorrow, but delay is a weapon in the dishonest judge's arsenal, e.g., *Smith v. U.S. Court of Appeals for the Tenth Circuit*, 484 F.3d 1281 (10th Cir. 2007) (decided more than two years after briefing was complete), and my entreaties for prompt resolution have been ignored. Relief could be issued tomorrow, and you are in a position to issue it today, as you are in the remedies phase of this case. That is why PI is here.

You fear that “the American people are so divided that today they will not stand up, fight for, and defend our most precious constitutional values.” ECF # 261 at 161. PI trusts in the good sense of the common people, but fear that our judiciary has become so corrupt and self-important that it “will not stand up, fight for, and defend our most precious constitutional values.” My reasoning is presented in an elegy to the Constitution and rule of law, styled as a letter to you and attached as Exhibit A.

For the terminally ambitious, the allure of fascism appears irresistible, and the lead defendant in this case is an object lesson. In Secretary Rubio's eyes, “Donald Trump is dangerous³ ... a con artist⁴ ... an embarrassment⁵ ... unqualified to control the nuclear codes.”⁶ His “rhetoric reminds

³ Marco Rubio (@marcorubio), X (formerly Twitter) (Mar. 1, 2016, 12:27 PM), <https://x.com/marcorubio/status/704719780188704770>.

⁴ Patrick Svitek, Rubio Eviscerates “Con Artist” Donald Trump, *Texas Tribune*, Feb. 16, 2016.

⁵ Sabrina Siddiqui, Rubio: Trump is ‘an embarrassment’ and Republicans will pay big in November, *The Guardian* (U.K.), Mar. 15, 2016.

⁶ Ed O’Keefe, Rubio called Trump a dangerous ‘con man.’ Now he says Trump should be president, *Wash. Post*, May 27, 2016.

[Rubio] of third-world strongmen ... This is a frightening, grotesque and disturbing development in American politics.”⁷ But human nature is immutable, and the siren song of power is an aphrodisiac to which the soulless are particularly susceptible. Rubio is but one in a long line of those who, driven by blind ambition, have prostrated themselves before the throne of King Don.⁸ Vice-President Vance found Trump “unfit for our nation’s highest office,” and “questioned whether Trump could be ‘America’s Hitler.’”⁹ This would make Vance a good little Nazi, which isolates the problem.

Fascism thrives on capitulation and survives on fear.

The German bench did not hold in the face of Hitler and his minions, and there is no reason to believe that ours will, either.

Legally speaking, PI has a dog in the hunt in this case. Back when PI went to law school, it *was* settled law that the Constitution protected the right “to receive information and ideas,” *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972), and that “the protection afforded is to the communication, to its source and to its recipients both.” *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976). The Defendants do not only impair the rights of foreign students to speak, but PI’s right to hear what they have to say. The Constitution is our catechism: Thereunder, the government has no business stifling speech, and we citizens have a right to force it to stop. And where there is a right, this Court has a corresponding duty to provide an effective remedy. *Marbury v. Madison*, 5 U.S. 137, 163 (1803). In theory, precedent creates a reliance interest, *Moragne v. States Marine Lines*, 398 U.S. 375, 403 (1970), but liberty can find

⁷ Jeremy W. Peters, Marco Rubio, Nearing Reckoning in Florida Primary, Likens Donald Trump to ‘Third-World Strongmen’, *N.Y. Times*, Mar. 12, 2016.

⁸ Caroline Vakil, Rubio praises Trump after explosive Zelensky meeting, *The Hill*, Feb. 28, 2025.


⁹ Mia McCarthy, ‘I’m a Never Trump guy’: All of J.D. Vance’s Trump quotes that could come back to bite him, *Politico*, Jul. 15, 2024.

“no refuge in **[OUR] jurisprudence of doubt**,” *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 844 (1992) (emphasis added).

Indeed, it is that “jurisprudence of doubt” that prompts PI’s upcoming journey. Like celebrated fascism scholar Timothy Snyder, who abandoned his lucrative sinecure at Yale for the safety of Canada, PI is seeking shelter from the five-alarm fire of fascism assaulting our shores. According to his best friend Jeff Epstein, “Trump is a man without any scruples,”¹⁰ placing vocal dissenters at risk. PI has no realistic hope of court protection under *Führerprinzip* 2.0.

In his first inaugural, President Reagan spoke of America as “the last best hope of man on earth.”¹¹ And that hope is fading. The Trump regime has the means to perform “dragnet” surveillance without transparency or due process protections and, with the advent of a digital currency, to prevent citizens from spending their own money. In China, if you criticize the government, you can be overlooked for loans, denied jobs, and barred from purchasing airline and train tickets.¹² And people are already losing jobs *here* for their speech. “If you want a picture of the future, imagine a boot stamping on a human face—for ever.” George Orwell, *Nineteen Eighty-Four* (1948) at 154. PI urges this Court to meet the urgency of the moment, and act with boldness and alacrity.

Respectfully submitted this 22nd day of October,



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¹⁰As reported by de facto Epstein biographer Michael Wolff, who has 100 hours of taped interviews. Morgan J. Freeman (@mjfree), X (Aug. 9, 2025, 10:36 PM GMT), <https://x.com/mjfree/status/1954310773536399565> (excerpt from longer Meidas Touch interview, cutting to the chase).

¹¹ Ronald Reagan, First Inaugural Address, Jan. 20, 1981.

¹² James Clark Reynolds, China's dystopian social credit scores that punished people for 'bad behaviour' such as traffic offences... as Labour moves to force Brits to store driving licences in digital 'wallets', *Daily Mail*, Jan. 22, 2025.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2025, I caused a copy of this NOTICE OF UNAVAILABILITY AND SUPPLEMENT TO MOTION TO INTERVENE (INCORPORATING AUTHORITY) to be mailed to counsel at:

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